

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICIA TRATEBAS

Plaintiff,

No. C 05-5109 JSW

v.

FEDERAL GOVERNMENT OF THE
UNITED STATES OF AMERICA,**ORDER DENYING
APPLICATION TO PROCEED *IN
FORMA PAUPERIS***

Defendant.

On December 9, 2005, Plaintiff filed a one-page, handwritten complaint alleging that she has encountered problems with access to San Francisco Housing Authority ("SFHA") due to her consumption of medical marijuana. Plaintiff has earlier filed a lawsuit against the SFHA to fight her eviction (*Tratchas v. San Francisco Housing Authority*, Case No. 05-cv-1327 JSW (filed April 1, 2005)) as well as a case against the United States "to challenge the Federal Courts on [medical cannibas laws]" (*Tratebas v. United States*, Case No. 05-cv-2401 JSW (filed June 14, 2005)). This matter, in which Plaintiff seeks to legalize medical cannibas, appears to replicate the same claims made in the earlier matters and was deemed related to Plaintiff's previous cases by the undersigned.

Courts must deny *in forma pauperis* applications under certain circumstances, including when the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Plaintiff's complaint in this matter fails to state a claim upon which relief can be granted. In *Gonzales v. Raich*, 125 S. Ct. 2195, (2005), the United States Supreme Court held that the federal Controlled Substances Act applied

1 to medical marijuana, which certain patients had been allowed to use under the terms of the
2 California Compassionate Use Act. The federal courts are required to follow this binding
3 precedent and the federal government is required to follow the federal Controlled Substances
4 Act. Consequently, neither the SFHA's refusal to let Plaintiff smoke marijuana in its public
5 housing facilities nor the federal government's enforcement of the laws restricting use provides
6 a cognizable legal claim.

7 For these reasons, and for good cause shown, Plaintiff's application to proceed *in forma*
8 *pauperis* is HEREBY DENIED WITHOUT PREJUDICE and the Complaint is DISMISSED
9 WITH LEAVE TO AMEND. If Plaintiff wishes to pursue this action, she must file an
10 Amended Complaint setting forth a cognizable legal claim and a renewed application to proceed
11 *in forma pauperis* by February 21, 2006. Failure to file a cognizable legal claim shall result in
12 dismissal of this action with prejudice. The Court advises Plaintiff that a Handbook for Pro Se
13 Litigants, which contains helpful information about proceeding without an attorney is available
14 through the Court's website or in the Clerk's office.

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16 **IT IS SO ORDERED.**

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18 Dated: January 27, 2006

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE